1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

Governor had only a general power of co-ordination and discipline. These departments, directed from Istanbul, included the administration of justice: a field in which Turkish law had by 1900 developed far beyond its Shara' origins. The composite and ill-coded civil Majalla, a mass of *ad hoc* legislation, and a body of French commercial law had been adopted. The resulting codes were not only imperfectly drafted and full of anomalies, but too often quite unsuited to 'Iraqi needs. The Courts which administered them represented a comprehensive and not ill-considered system spoiled by the delays and abuses in its practical working, by its exclusive use of a foreign language, and by the underpaying of the judges. The privileged position of foreigners, protected by their outdated and resented Capitulations, was assured by special arrangements in both civil and criminal matters.

Abundant work for the Courts was provided by the department of Land Registry, or Tapu. It had been inaugurated in 'Iraq by Midhat Pasha as a land-settlement and stabilizing measure; but in unsurveyed agricultural lands, largely in immemorial tribal possession and far from conforming to the official view that 'unalienated State lands' were at Government's free disposal, the Tapu system could do little save create new disputes, bestow rights on parties powerless to exercise them, and destroy the best elements in the shaykh–tribesman relationship. The immense practical difficulties of land settlement in 'Iraq were unrealized, and the whole essential background of cadastral survey and social control was lacking.

In the field of medicine and quarantine the standard of Turkish doctors (rarely Turkish by race) was low, their assistants and inspectors were untrained, their equipment was inadequate. The medical services, accustomed to rely on mission hospitals and dispensaries, were scanty in the towns and non-existent outside. Educational services made a slightly better showing, though standards were everywhere below those of the foreign or foreign-inspired mission schools. Free primary schools, well organized on paper, existed at most towns, and secondary also at the larger. Industrial schools had been founded at Baghdad and Basra, and higher theological learning was available. The military educational system was distinct. The sons of civil notables and high officials went to Istanbul to complete their Turkish education, and a few sons of the greater shaykhs to the Tribal College. The teaching profession was ill reputed and unpopular, its methods primitive.

These do not conclude the list of the 'imperial' departments. The Public Debt administration, handling selected revenues on behalf of the European creditors of the Porte: the local offices of the Régie Co-intéressée who held the monopoly for the manufacture

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

wise and moderate 'Abd al-'Aziz al-Qaṣṣab. By the summer of 1926 the routine of parliamentary procedure was established; but it was already clear that the backwardness of the electorate, and the freely used power of the Government to secure the election of deputies of its own choice, could not but preclude any early possibility of genuine democracy.

The Administration, on lines half inherited from the Turks and half established by the British, had well begun. With many shortcomings and omissions it operated already more widely and more effectively than had any Turkish Government, and aimed at a superior standard of service. In Baghdad the departments under each Ministry improved their organization, sifted their staffs, advanced towards complete 'Iraqi control. By 1926 not only were all Ministries in effective 'Iraqi control but most of the larger departments had been handed to 'Iraqi directors, notably those of Health, Education, Agriculture, Posts and Telegraphs, Government Accounts, Police, Prisons, the Census; those of Irrigation, Tapu, Customs, Revenue and State Domains, Veterinary services, Public Works, the Port of Baṣra, and 'Iraq Railways remained for a further period under British executive control. In the provinces, new qadhās and nahiyas were formed or regrouped. The position of the British 'Administrative Inspectorate' was satisfactorily defined by law. A Standing Board selected 'Iraqi officials for higher posts, and the formation of a regulated civil service on modern lines was taken in hand. The Ministry of Finance, where R. V. Vernon assumed the Adviserships in 1925 after an interregnum under L. M. Swan, had developed and specialized its organization, reduced its non-'Iraqi staff to a minimum, and founded a Finance Inspectorate. The post of Auditor-General, reporting to the Cabinet direct, was created in 1924 and held by J. Parlby, who had worked in 'Iraqi finances since 1917. The Advisership of Communications and Works was held by Wheatley until the arrival of L. E. Bury in 1925, and again after the latter's departure three years later. In Interior, Cornwallis was assisted by a senior member of his Administrative Inspectorate—Pulley, Wilson, or Edmonds—and by one or more juniors.

The Courts offered justice and accessibility to an extent far superior to that of alien and corrupt Ottoman tribunals; during these years both civil and criminal courts multiplied at liwā and qadhā headquarters as need declared itself, and the statistics of cases heard showed an increasing recourse to law. Civil jurisdiction lay with the Peace Courts of the Qadhis—who after 1923 included Shi'i Qadhis—and junior judges, the Courts of First Instance at three or four liwā headquarters, and a single Court of Appeal and Cassation, with a British President, at Baghdad. This President

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

692 was H. F. Forbes, I.C.S., in 1920–1, B. H. Bell in 1921–2, and thereafter G. Alexander until 1934. Davidson on transfer to the staff of the High Commission handed the Advisership of Justice in [671] 1922 to E. M. Drower, who held it till 1946. The Turkish Majalla, Code of Civil Procedure, and Commercial and Maritime Codes remained in force. Criminal justice was in the hands of single magistrates with first, second or third-class powers, and Courts of Sessions which possessed also appeal jurisdiction, while limited magisterial powers were still possessed by certain administrative officials and municipal bodies. The Tribal Disputes Regulations remained in force, beloved of administrative officials but disliked by the legally-minded. The rights of foreigners, preferential though no longer Capitulatory, were defined in the Judicial Agreement. 693 Unsuccessful efforts were made to form a Bar Association for the body of excitable, ill-disciplined advocates, into whose numbers the Law School poured annual recruits.

701 The forces of law and order were at this period four in number: the 'Iraq Army, British forces of ground and air, the 'Iraq Levies, and the Police. The 'Iraq Army, based on voluntary recruitment from 1921 onwards and within its limits conceived on the most modern lines, by 1925 rose in strength to 7,500 men. It remained constant at about this establishment for the next eight years. There were six infantry battalions, three cavalry regiments, two mountain and one field battery, and all necessary services. The officers had almost all served in the Turkish Army, but in the lower ranks at least were adaptable to new standards. Units of the Army took part in many small operations against tribal enemies and saw more serious service in Kurdistan, not without losses. Great attention was paid to its Training Centre and its Royal Military College. The British Military Mission was re-formed and increased in 1925.[1] By this date the Army's rôle of successor, for all ground purposes, of the British forces was clearly indicated. 000 The latter were progressively reduced, actually to vanishing point in 1929. In March 1921 there were 33 infantry battalions, 6 cavalry regiments, 16 batteries, and Sapper and armoured-car companies: these by 1926 were reduced to three battalions, two by 1927, one by 1928, and vanished entirely in 1929. The British military element, so characteristic of 'Iraq under the Occupation, was thenceforward to be absent until 1941. The Royal Air Force—under successive commanders of high rank, nearly all of whom were

[1] Successive heads of the British Military Mission, and Advisers to the Ministry of Defence, were: Colonel P. Joyce, 1921; Major-General A. C. Daly, 1925; Major-General G. G. Loch, 1928; Major-General H. Rowan-Robinson, 1931; Major-General C. J. Bruce-Hay, 1934; Major-General H. W. M. Watson, 1937; Major-General G. G. Waterhouse, 1938; Major-General D. G. Bromilow, 1941; Major-General J. M. L. Renton, 1944.

1: Longrigg G-4, 5 (ca. 1915-1940) MH1 Iraq MH1

(from the present writer), of Income Tax (from Sainsbury), of Public Works (from Clay); these were to be closely followed by that of Irrigation (from Allard) in 1933, of Tapu (from Alderman, who died) in 1934, and of Antiquities in 1934. Progress towards raising the standard for officials, the object of successive boards, commissions, and examinations, was fluctuating; the work of one minister in re-selecting and purifying the personnel was undone by the next, and was rarely free from personal factors. In the task of fixing establishments and regulations, as in all Government activities, the discontinuity of frequently changed Cabinets was an obstacle to progress. Nevertheless, a fair standard was achieved in a body of officials no longer exclusively ex-Turkish veterans, no longer alien, and far superior to anything seen in Ottoman times for honesty, goodwill, and energy. Corruption if not unknown was rarely scandalous and, as never before, sincerely condemned.

The Courts continued, not without an occasional scandal, to earn general respect. The standard of the judiciary was respectable and some 'Iraqi jurists were of high merit. With accessibility, recourse to the Courts grew commoner: 13,000 Peace Court cases were heard in 1919, 63,000 in 1929. Seventy-three advocates were licensed to practise in the former of these years, 165 in the latter.

New administrative units—qadhās and nahiyas—were formed by regrading and subdividing as need occurred; examples were common in Kurdistan, and in the Southern Desert Province formed in 1928 for better frontier control. New groupings among the departments in Baghdad led to changes of ministerial function and nomenclature; but the object of these—the better handling of projects of development—and indeed administrative progress in every field, was for the time partly frustrated by the economic depression of the years 1929 to 1932.

The years of penury and near-crisis preceding the entry of 'Iraq into the League called for wise and firm financial management. The general fall in prices of agricultural products led to a severe drop in land revenue, which the fall in Customs and other receipts aggravated. At the same time essential expenditure did not decrease, and the campaigns in Kurdistan made exceptional demands. The slump and its social effects would have been more severe had 'Iraq been an exporter of manufactured goods; instead, her raw products continued in some demand at lower prices, and it was possible at least to maintain the standards of the public services, and to help distressed pump-cultivators to survive. The State's finances were, under prudent advice, well handled, with careful budgeting, strict accountancy, and measures of economy which demanded some political courage. Vernon left the Adviser-ship to the Ministry in 1928, succeeded for three years by Swan as

1: Longrigg G-4, 5 (ca. 1915-1940) MHI Iraq MHI

563 has been said elsewhere to show the nature of their problems. Their own restlessness in a minority status, their antipathy to an Arab Government, their uneasy leadership by feudal Aghās or 'intellectual' townsmen towards a non-'Iraqi nationalism—or Communism—indicated that these problems remained unsolved. Still deeply disunited, the Kurds had shown no signs of evolving into a contented or strengthening element in the State; and the wider Kurdish question of their broad Turco-Perso-'Iraqi homeland had not been—probably never would be—answered on lines acceptable to the spokesmen of that race.

671 692 Throughout the territory a fair level of security and justice—a level doubtless far higher than any seen in 'Iraq for centuries—had been achieved and prevailed in all or almost all regions. The Courts had been developed in the last five years by the institution of a Court of First Instance at every liwā headquarters and by the establishment of Appeal Courts at Baṣra, Mosul, Ḥilla, Ba'quba, and Kirkuk as well as at the capital. The Tribal Disputes Regulations remained in force, with recent amendments; a new Civil Code was passed into law in 1951 to take effect two years later, thus superseding the Majalla; a new Commercial Code was already in force. The Criminal Code drawn up in 1918 retained its authority. As a whole, the judicial system, Codes of Law, Courts, Judges, and Magistracy, gave every appearance of adequacy to 'Iraq's present needs, a goal reached by thirty years of well-directed effort. The last British Judge, Sir J. Pritchard, left 'Iraq in 1951.

625 697 The Police, numbering nearly 20,000 of all ranks, included a mobile force of nearly 6,000 and mechanized sections. They had regained the standards temporarily lost in 1948 and were felt to be, with occasional lapses, a creditable and efficient body. The force was adequately organized, trained, and specialized for its multifarious duties in city, countryside, mountain, and desert. The level of its officers was predominantly high and sometimes admirable. The administration of the prisons was on modern and constructive lines, a world of contrast from the filth and medieval corruption of Hamidian times.

701 The Army, which in its lifetime of thirty years had had its good days and its bad, contained some good and some indifferent material. Its leadership was likely to be excellent in the smaller units, doubtful in the larger, and its fighting prowess would always be in strict proportion to its leadership. Its organization[1] and training establishments, and its concentration on mechanized

[1] Army service was compulsory (with statutory purchasable exemptions) for two years, followed by service in the Reserve till the age of forty-five. Voluntary service could be substituted for compulsory either during or after the initial two years, and would run thereafter in two-year terms without affecting Reserve liability.

647 423 records of miri land, such management and control as is possible of these heterogeneous and extensive territories must be carried out primarily in the district by persons in direct touch with the people and the parcels affected. Many questions are no doubt settled by the customary social leaders as elsewhere (e.g. tribal sheikhs) and never reach the administration. Those that do may in some cases be dealt with by one of the few local officers of the State Domains or even by another Department (e.g. on the Yuseflya by the Irrigation). But ordinarily the effective agents of Government in the control of miri lands are the officers of the provincial administration on the spot, who must act for the most part according to their individual judgment or on the instructions of their provincial superiors in each case. This local control is naturally subject to the direction, and occasionally to the intervention, of the State Domains service or the Ministry to which it is responsible. It is also necessarily subject to intervention by the Ministry of the Interior or of any other Ministry, whose public responsibilities may be affected by some action taken. It is further subject to intervention by any Deputy or influential private person who may be concerned or interested.

423 682 In a limited number of cases, disputes affecting the holding of miri land are decided under the Tribal Civil and Criminal Disputes Regulations, because of their reaction on tribal peace and public security. But since such disputes in theory merely concern the domestic management by Government of its own estates, they do not as a rule fall within the jurisdiction of any regular Court of Justice. Reference has already been made to the general failure to introduce the Land Code and more particularly tapu tenure effectively. Consequently by the side of a truncated and semi-atrophied Statute Law there have survived throughout the greater majority of the land, methods of acquiring and holding land which have never been regulated by law at all.

423 427 2. An attempt has already been made to illustrate in broad outline the conditions under which land has been for the most part occupied and cultivated in the rainfall zone. There are commonly two classes of people concerned. Firstly (*a*) the larger man, who may be the local Agha or a small capitalist who has helped to develop the land by providing funds, seed, etc. Secondly (*b*) the actual cultivator who, in the mountainous districts, has tamed the wilderness by building terraces, constructing water channels, clearing the ground, etc., and who, in the plains, has similarly, if less laboriously, reclaimed the land by regular tillage and fallow. It is evident that in actual fact a partnership commonly existed or exists between these two classes.

Now it is generally accepted that the intention of the Ottoman legislator, when promulgating the Land Code, was to establish the actual cultivator on the land; and when that cultivator has remained on the same land and effected improvements of a capital nature by his labour, his claim is clear. But the claim of the larger man instanced, who will almost invariably have co-operated in some indispensable way (e.g. by according protection, providing capital or essential assistance), who has very likely been acknowledged as landlord (mallak) and perhaps regularly received mallakiya, cannot be equitably or advisedly disregarded. Investigation on the spot would be needed to weigh the respective claims in each case; but it can be seen that, broadly speaking, local conditions have often produced an association in the development and cultivation of the land between local overlord and cultivating holder in these regions, in which both have rights that should be recognised in their mutual interest as well as that of the country at large.

423 619 In the Irrigation Zone and throughout the desert borders the Turks found the land for the most part in the hands of tribal confederations.

the Turkish Ministry of Interior in April, 1913, had directed that the use of Arabic should be allowed in the Courts of Justice and in public offices. In spite of the failure to carry out this concession literally, the use of Turkish was more of an affront to Arab sentiment than a handicap to litigation. Turkish was, and in many centres still is, the polite language, much as French was at the Courts of Prussia and Russia in the eighteenth century.

Although criminal cases could be tried in these newly established civil courts,[1] the bulk of such cases was not sent to them. Serious cases, mainly robbery under arms, continued to be tried by military courts, under a highly summary procedure.[1] In Basra, 'Ashar, 'Amāra and Nāsirīya, the Military or Deputy Military Governors decided disputes of all kinds, while in the districts the same powers were exercised by Political Officers. Until after the fall of Baghdad no civil courts existed outside of Basra town.

Justice in Tribal Areas

It was soon evident that the 'Iraq Code could not be applied in its entirety to the tribal areas, comprising practically all of the Occupied Territories outside the towns. It was also clear that special powers were needed by the Political Officers to dispose of civil and criminal cases in their districts. To meet the situation, the Tribal Criminal and Civil Disputes Regulation was drawn up by Mr. H. R. C. Dobbs,[2] on the lines of the Indian

[1] *Admin. Rep., Basrah*, 1917: *Rep. Military Governor of Basrah*, 1917, p. 199.

[2] Henry Robert Conway Dobbs, G.B.E., K.C.S.I., K.C.M.G., K.C.I.E. (1871-1934), may be rightfully called one of the makers of modern 'Iraq. He saw wide and distinguished service in India, Persia and Afghanistan. As Revenue and Judicial Commissioner to Baluchistan, 1909, 1911 and 1917, he came into direct contact with the 'Sandeman System'. He was under orders as Resident to Turkish Arabia when war broke out in 1914, but it was as Revenue Commissioner that he supervised the organization of administration, 1915-16, while Sir Percy Cox, Chief Political Officer, enlarged political relations with the Arabs. Versatile in talents, but essentially an administrator, he brought to the difficult period, 1923-9, when he served as High Commissioner to 'Iraq, a great capacity for realistic thinking, a highly developed sense of duty, and a deep loyalty to the Empire which dominated all his relations with the Arabs.

1 [Under British Military administration ca 1917]

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175* 727* 692 Frontier Crimes Regulation and was promulgated in February, 1916. It gave authority to the Political Officers to invoke a tribal *majlis* or other arbitrating body to deal, in accordance with tribal custom, with all cases in which any of the parties concerned was a tribesman.[1]

In all arbitration procedure, the Political Officer had the final word, although the Chief Political Officer might review the case. The Political Officer had to confirm the findings of the *majlis*, and he might set aside or add to the sentences imposed.[2] He was also invested with magisterial power to try cases which did not lend themselves to the application of tribal arbitration.[3]

The Regulation in its application proved congenial to the tribes, for it enabled them to settle disputes in ways long familiar to themselves. It also aided in tribal settlement and pacification by giving effect to tribal opinion obtained by arbitration, and it raised the importance of the shaikhs by giving them a recognized place in the political and legal system. The Political Officers, on their side, found that considerable work was taken off their shoulders.[4]

175* 727* 628 681 Over one point of tribal justice the views of the tribesmen and of the Political Officers often clashed. In cases of murder arising out of a blood-feud, the tribesmen were accustomed to regard *fasl*[5] or payments of money and usually, of women, as sufficient to settle the score and to end the feud. Imprisonment or capital punishment was thus considered not only harsh but unnecessary. In many cases where a woman violated or had been even accused of violating the desert code of morality, the death of the offender was demanded by the code in the name

[1] *Tribal Criminal and Civil Disputes Regulation*, G.O.C. Proclamation No. 2 of 1916, ch. iii, Sec. 7.

[2] Ibid., Sections 10, 11, 13. [3] Ibid., ch. iv and v.

[4] *Reports of Admin. for* 1918 *of Divisions and Districts of the Occupied Territories of Mesopotamia* (Calcutta, n.d.): Qurna Report, p. 306 (hereafter *Admin. Report*, 1918).

[5] For valuable first-hand observations on *fasl*: *Monthly Reports of Political Officers of the Occupied Territories, November*, 1919 (hereafter *Monthly Rep'ts*): Nāsiriya. pp. 94-5.

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INITIATION OF ADMINISTRATION

As at the occupation of Basra, most of the Turkish Judicial personnel had fled. The more recent records had been removed or destroyed. Beyond the institution of a Court of Small Causes and a *Shara'* Court (Muslim Law Court) in July,[1] Civil Courts were in abeyance until the Courts' Proclamation of December 28th, 1917,[2] reconstituted the Civil Courts under Mr. (later Sir) Edgar Bonham-Carter as Senior Judicial Officer. He had arrived in October, and after studying the situation with the experience gained in his long and distinguished career in the Sudan Legal Department, had outlined the essential requirements to be embodied in the proclamation.

Under the Turks, First Instance Courts had existed at the headquarters of each *Liwā* or District, and of each *Qādha* or Sub-district: a total of ten *Liwā* Courts of First Instance and forty *Qādha* Courts of First Instance in the three wilayets of Basra, Baghdad and Mosul. Obviously, from the standpoint of the prevailing poverty and the sparseness of the population, the number was excessive. In addition, most of the judges had been untrained if not actually incompetent. Under the new system, a Civil Court of First Instance, normally to be composed of a British judge and two Arab judges, was to be reopened at Baghdad and later, elsewhere, as deemed necessary.[3] Peace Courts which were also Small Cause Courts, such as had been established in Baghdad and a few other places just before the war, were to be reconstituted wherever required.[4] Elsewhere either Judges of Courts of First Instance, Political Officers or other officers were given the right to officiate.

In the days of the Turks, Appeals lay from the lower Courts to a Court of Appeals situated at the capital of each wilayet.[5] Decisions from these Courts could be revised by the Court of

[1] *Proclamations*, 1916-1918: Proclamation No. 8, July 2nd, 1917.
[2] Ibid., Courts' Proclamation No. 17, December 28th, 1917. The date 'end of December, 1918' given for this Proclamation in *Review C. Admin.*, 1914-1920, p. 94, is obviously a misprint.
[3] Ibid., Courts' Proclamation, Section 3 (1). [4] Ibid., Section 5.
[5] Normally composed of a Turkish President and four Arab Judges. *Admin. Rep. Justice*, 1919, p. 1.

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692 Cassation at Constantinople. The Courts' Proclamation
175* abolished appeals to any Court outside 'Iraq,[1] and replaced all
727* other Courts of Appeal by a single Court of Appeal composed of a British President and two Arab Judges.[2]

Religious Courts

698 The importance of reconstituting *Shara'* or Religious Law
175* Courts, as provided in the Proclamation,[3] had been recognized
727* in 1917 by Mr. Bonham-Carter. He had then pointed to the respect with which the Courts were regarded in Muslim countries, to the practical advantage of deciding certain classes of cases by Muslim Judges in accordance with Muslim Law, and to the immense additional political advantage of associating with the Government the influential religious class of the *'Ulamā* from which the *Qādhīs* were drawn.[4] He had indicated these alone as adequate reasons for continuing them.

Sunnī *Qādhīs*, therefore, were appointed with these ends in view to fourteen centres by the end of 1918, and to twelve additional ones by the end of 1920, as well as to the *Shara'* Court set up in Baghdad in July, 1917. A long standing grievance was partly remedied by permitting Shī'īs to refer their cases to Shī'a *Qādhīs*. Under Turkish rule, the Shī'īs had been forced to submit their personal status cases, if they took them to court, to the Sunnī *Shara'* Courts where the cases were decided in accordance with Sunnī Law. Shī'a religious Judges under the name of *Nayabat-al-Ja'farīya* were appointed in 1918 to six centres and to six others by the end of 1920.

Criminal Courts

692 The reorganization of the Criminal Courts was more difficult
175* than that of the Civil Courts. The Ottoman Criminal Pro-
727* cedure required a multitude of Courts, investigating magistrates

[1] Courts' Proclamation, Section 9. [2] Ibid., Section 6.
[3] Ibid., Section 10. [4] *Admin. Rep. Justice*, 1917, p. 4 (12).

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and procurators, which it would have been beyond the capacity of the Civil Administration to supply. Nor would it have conduced to the effective administration of justice if the Magistrates, most of whom were English officers with little previous experience of the administration of law, attempted to follow the elaborate Ottoman Procedure.[1]

In addition, the Ottoman Penal Code presented difficulties. Although based on the French Penal Code, it had been subjected to so many amendments since it was issued in 1859 that it was, in the opinion of the Senior Judicial Officer, 'unscientific, ill-arranged and incomplete'.[2] The first difficulty was overcome by the creation of a special code known as the Baghdad Criminal Procedure Regulations,[3] brought into operation January 1st, 1919. Until then all criminal cases had been tried by Military Governors and Political Officers.

Although the Regulations adopted one or two sections from the Ottoman Criminal Procedure,[4] the ultimate origin of which was the French Criminal Procedure, its main provisions revealed the inability of those in the Civil Administration to dissociate themselves from Indian traditions or to escape from the application of British Military Law. Both of these formed the basis of the Sudan Code of Criminal Procedure from which the Regulations were drawn. The new Regulations were admittedly subject to the exigencies of war and of military occupation.[5] Offences committed by members of the Army of Occupation even against the inhabitants of the country were not to be tried under them. It was expected, however, that after the conclusion of hostilities, a permanent Code would be prepared.

[1] *Admin. Rep. Justice*, 1920, p. 2 (7).

[2] *Memorandum on Baghdad Penal Code*, by the Senior Judicial Officer, November 21st, 1918. Also *Admin. Rep. Justice*, 1918, p. 2 (7).

[3] Promulgated by Proclamation of General Officer Commanding, November 15th, 1918. (These Regulations hereafter *Bd. C. P. Reg.*).

[4] Particularly Chapters iii and ix, concerning Procurators, and Chapter xi, concerning Civil Complaints and Civil Damages. For Ottoman Criminal Procedure, see Young, Sir G., op. cit., Vol. VII, pp. 226 ff.

[5] *Bd. C. P. Reg.*, Sec. 2 (1).

727* 715* 671 692 Four classes of Criminal Courts were to be constituted: 1. Courts of Session; 2. Courts of Magistrates of the First Class; 3. Courts of Magistrates of the Second Class. 4. Courts of Magistrates of the Third Class.[1] A Court of Session was to be a Court consisting of three Magistrates, of whom one at least must be a Magistrate of the First Class.[2] Political Officers and British Judges were to be Magistrates of the First Class, Assistant Political Officers and Arab Judges were to be Magistrates of the Second Class.[3] The Civil Commissioners might appoint any person a Magistrate of the First, Second or Third Class.[4]

The Ottoman Penal Code was replaced on January 1st, 1919, by the Baghdad Penal Code,[5] based largely on the former, but with amendments and additions from Egyptian sources, in turn based on the French Penal Code.

Among the tribes, the Tribal Criminal and Civil Disputes Regulation continued to be applied with considerable success.[6] It was regarded in the tribal areas as 'undoubtedly the most satisfactory' method of settling tribal disputes,[7] as the reason for decrease of crime[8] and as 'one of the props of the tribal system'.[9] Although doubt was cast on both the wisdom and ability of the Administration to continue the tribal system indefinitely,[10] only in 'Amāra Division was uncertainty felt as to the usefulness at that time of the Tribal Disputes Regulation.[11]

[1] *Bd. C. P. Reg*, Sec. 4.
[2] Ibid., Sec. 5.
[3] Ibid., Sec. 6.
[4] Ibid., Sec. 5.
[5] Promulgated by Proclamation of the General Officer Commanding, November 21st, 1918.
[6] For views of Political Officers: *Admin. Reports*, 1918: *Shatrah* (*Nasiriyah*), p. 387; *Qurnah*, p. 306; *Kut*, p. 384; *Admin. Report*, *Hillah*, 1919 (Baghdad, 1920), p. 3; *'Amarah Division Admin. Report*, 1920-1921 (Baghdad, 1921), p. 7; *Monthly Rep'ts.*, *January*, 1919, Basra Sanjaq, p. 32.
[7] *Admin. Reports*, 1918: *Hillah*, p. 127.
[8] Ibid., *Nasiriyah*, p. 355.
[9] Ibid., *Hillah District*, p. 144.
[10] Ibid., *'Amarah*, p. 336; *Hillah District*, p. 34; *Hillah Division*, pp. 120-1; *'Amarah Report*, 1919, p. 9; *'Amarah Report*, 1920-1921, p. 25.
[11] *'Amarah Report*, 1919, p. 11.

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INITIATION OF ADMINISTRATION

Amalgamation of Basra and Baghdad Courts and the Creation of the Judicial Department

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The political and administrative considerations which motivated the amalgamation of the administration of the Basra and Baghdad wilayets in September, 1918,[1] applied with equal force to the judicial systems which had not then been assimilated.[2] On January 1st, 1919, however, the two systems were finally consolidated,[3] the 'Iraq Occupied Territories Code and all Indian and British Acts operative under it being repealed with the exception of nine Indian Laws and one English Law, set forth in a special schedule. 'The change was effected without difficulty and was welcomed by the population since it replaced a foreign system of law and procedure by one with which they were familiar.'[4]

The judicial system of Mōsul, the administration of which H.M. Government had at one time desired to organize separately, in anticipation of it being assigned to France at the Peace Settlement, was also assimilated, on the same date, to the system in operation throughout the Occupied Territories.

The number of Courts established under the Civil Administration, 1914-20, had been recognized as being as insufficient as the number under the Turks had been excessive.[5] Expansion and reform, however, had proved difficult owing to the necessity of subordinating the policy of the Department to that of the General Administration, owing to the lack of funds[6] and to the

[1] *Supra*, pp. 111-112.

[2] Cogent reasons for amalgamating the two judicial systems were advanced in *Review Admin. Basrah*, 1917, p. 6.

[3] *Basrah Courts' Amalgamation Proclamation*, 1918, by the General Officer Commanding, December 24th, 1918.

[4] *Admin. Rep. Justice*, 1919, p. 4 (12); *Admin Report*, 1918: *Nasiriyah*, p. 355.

[5] *Admin. Rep. Justice*, 1918, p. 1; ibid., 1919, p. 2 (4).

[6] Ibid., 1920, p. 8 (16). The proportion of expenditure on Judicial services to total expenditure and to receipts, based on figures given in Table I, p. 152, is as follows:

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difficulty in finding suitable staff, whether 'Iraqi or English, to undertake them.[1]

Recognition was not lacking of the unsatisfactory nature of legislation which, during the whole period of the Occupation was by proclamation by the General Officer Commanding, or by regulations or orders issued by the chief civil authority and the Judicial Officer, under authority of the General Officer Commanding. Lieut.-Colonel Knox, Senior Judicial Officer, in his report for 1917 had commented:

> It is high time that he (Senior Judicial officer) be relieved of his legislative duties, which should be the special task of a legal Secretary . . . Assigning work to one such person would put an end to notices of spurious legality, threatening the public with dire and unspecified penalties for dubious offences.[2]

Mr. Bonham-Carter, on his side, believed that while considerable legislation would be necessary before the Courts could contribute to better conditions in 'Iraq, no radical legislative improvements could be undertaken without the coming of peace and without a Representative Legislative body.[3]

Under Mr. Bonham-Carter, the policy of employing 'Iraqis

[1] *Admin. Rep. Justice*, 1920, p. 8 (16).
[2] *Review Admin. Basrah*, 1917: *Report on Admin. of Civil and Criminal Justice in Basrah Wilayet, by Courts established under the I.O.T. Code, during* 1917, p. 107.
[3] *Admin. Rep. Justice*, 1919, p. 9 (23); ibid., 1920, p. 8 (16).

	1917–18	1918–19	1919–20
	Rupees	Rupees	Rupees
Percentage of Expenditure on Judicial services to total Expenditure	2·14%	2·24%	1·78%
Percentage of Expenditure on Judicial services to total Receipts	1·57%	1·41%	1·43%

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both as Judges and as clerical staff was applied from the first. Although difficulty was often experienced in making suitable selections of Judges and *Qādhīs*,[1] he 'had no hesitation in saying

TABLE II

The following Table indicates the nationality of personnel of the Judicial Department, 1918-20.

	1918* (Baghdad Wilayet only)	1919†	1920‡
British	6	10	11
Indians	—	4	6
'Iraqis (Muslims)	82	197	247
,, (Christians)	1	9	12
,, (Jews)	9	9	12
Syrians	—	1	1
Egyptians	—	1	—
Armenians	2	1	—
Total non 'Iraqis (A)	8	17	19
Total 'Iraqis (B)	92	215	271
Percentage of (A)	8	7·3	6·6

* *Admin. Rep. Justice*, 1918, p. 5. † Ibid., 1919, p. 8.
‡ Ibid., 1920, p. 7.

that the work had been done efficiently'[2] through the 'valuable services of the Arab Judges and staff', without whose 'help it would have been hardly possible . . . to carry out the policy of applying Turkish Law and Procedure'.[3]

To this policy of rendering more than lip-service to the principle of employing Arabs wherever possible may be attributed the comparative immunity of the Judicial Department from the criticism and hostility directed by 'Iraqī Nationalists, during the period before the establishment of the National Government, against the unsympathetic attitude in other Departments of the Civil Administration.

[1] *Admin. Rep. Justice*, 1918, p. 6 (15). [2] Ibid., p. 2 (5).
[3] Ibid., p. 6 (15). Also ibid., 1920, p. 8 (15).

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that no Shī'ī held a portfolio on the Council. Their resentment was not decreased by the fact that of five *Mutasarrifs* and nine *Qaimmāqams* on the list, only one, a *Qaimmāqam*, was of their sect. The High Commissioner, however, realized the difficulty of avoiding Sunnī appointments. Only a few trained and experienced Shī'īs were available as a result both of their habitual boycott of Turkish service and professional schools and of official Turkish discouragement to the entrance of Shī'īs into office and schools. The list with minor alterations was, therefore, approved in late January, 1921. When, however, the predominantly Sunnī Council continued to indicate, by appointing Sunnīs to the almost entirely Shī'a districts along the Euphrates, that it was prepared to do little to conciliate hostile opinion of the sect, the High Commissioner felt obliged to make a firm stand for the appointment of Shī'īs to such places, at least, where members of the sect predominated. After considerable persuasion, also, a place in the Council was found for a Shī'ī, the Ministry of Education being offered to Saiyid Muhammad Mahdī Tobatabai of Karbalā.

The reorganization of the Judicial Department under the new administration entailed comparatively few changes. Sir Edgar Bonham-Carter, who now became Adviser to the Ministry of Justice, had early adopted the policy of making the fullest use of 'Iraqīs as judges and officials, and of making no alterations in the institutions and laws with which the people were familiar, except in cases of clear necessity. The idea itself of an Arab Minister was not new. Sir Edgar had suggested such an appointment in early 1919,[1] but it had been deemed premature.

Reorganization of the Criminal Courts became necessary, however, when the Council of State adopted its scheme of reconstructing provincial administration along the lines of the Turkish system. One of the essential features of that system was the complete separation of the executive from the judicial

[1] Memorandum on Place of the Arab in Administration, February 5th, 1919.

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function, whereas under the system employed by the Civil Administration, the British officials, who were now to assume advisory functions only, had been given both executive and judicial functions.[1] The plans for the reorganization of Criminal Courts, when submitted to the Council of State on March 3rd, also included a scheme to strengthen the Court of Appeal by the addition of two judges and to vest in that Court the powers of confirmation and revision formerly exercised by the High Commissioner. Similarly, the powers of revision held by the Political Officers in their divisions were transferred to the Courts of First Instance in the *Liwās*.[2] In those *Liwās* where Judicial work was light, a Single Judge and an Assistant Judge with powers of a Court of First Instance was approved, in accordance with a scheme which had been brought into force by the Turks just before the outbreak of the war.[3] The scheme, as sanctioned by the Council, came into force on May 14th.[4]

Under the Civil Administration, the frequent and numerous appeals to Constantinople, a feature of the Ottoman Judicial System, had been abolished. The Court of Appeal as instituted instead had been also made the Court of Revision for all subordinate Courts. The Council of State now maintained that a Court of Revision or Cassation should be created, distinct from the Court of Appeal. The establishment of such a Court, it held, would be in accordance with Ottoman Law. It would relieve the Court of Appeal of much of its existing work and would in addition constitute a subordinate Court for appeals in important civil cases.[5] Although the desirability of exercising economy and of avoiding multiplicity of appeals appeared to weigh heavily against the Council's proposals, the policy of supporting the institutions to which popular ideas seemed

[1] *Supra*, p. 129.
[2] *Admin. Report, Justice*, 1920, p. 5.
[3] Ibid., p. 6.
[4] 'The Courts' (Revision) Proclamation, 1921: *Compilation*, 1920-1923, pp. 4-6. The outline of the Courts as sanctioned is given in detail in *Admin. Report, Justice*, 1920, p. 6.
[5] *Admin. Report, Justice*, 1920, p. 7.

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175x 642x 727 692 wedded, triumphed. The erection of the Court was sanctioned. Owing to financial and other reasons, it was not instituted, however, until December 24th, 1925.[1]

175x 642 727 652 The transfer of function and authority in financial matters from the British Administration to the National Government, perhaps the most complicated and difficult task of all, was hampered not only by the abnormal conditions resulting from the Insurrection, but also by the inheritance of a tangled web of financial transaction between the Military and the Civil authorities of the previous regime. This legacy conspired to unsettle the Ministry's operations even after the Cairo Conference, in March, 1921, at which the Finance Minister, Sasūn Effendi, himself taking part, had presumably settled the issues at stake among the various British authorities.[2]

An outstanding difficulty also lay in the fact that all matters pertaining to Finance were not placed under the supervision of the Ministry. This non-centralization of authority may have been due to the desire to establish checks on possible unsound administration. It is more probable that it came about as the result of the inherited British system which in this case had been taken over without great alteration. Following the system in vogue in India, the Civil Administration had introduced two secretariats, those of Revenue and of Finance, and eventually a third, that of Commerce, to deal with financial matters.[3] Upon the establishment of the provisional Government, the duties of the Finance Secretary were vested in the Minister of

[1] Royal *'Irāda* for formation of a Court of Cassation, December 24th, 1925: *Compilation of Laws and Regulations from 1st January, 1925, to 31st December*, 1925 (Baghdad, 1926), p. 36.

[2] For résumé of financial arrangements reached at the Cairo Conference and their effect on 'Iraq finances, see *Note on the Administration of the Public Finances of 'Iraq, 1st April, to November*, 1924 (Baghdad, 1925), pp. 11-18.

[3] For the manifold duties of the Revenue Department, see *supra*, p. 119. The Finance Department had dealt with all expenditure, currency and resource matters, Budget estimates, accounts and audits. The Secretary for Commerce had been also Chief Collector of Customs until the abolition of the Secretaryship, August, 1920, brought Customs under the Finance Department. See *Note on Organization of Civil Admin. of Meso.*, April, 1920.

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of their position for their personal profit.[1] Lesser officials have too often followed the example of their superiors. Attempts have been made to impose checks, as by the auditing of government accounts by a British Comptroller and Auditor General responsible only to the Chamber of Deputies. This official has performed his task ably and efficiently,[2] but the results of his work have not been as extensive as might have been expected, due to the reluctance of Parliament to take action, particularly against highly placed or influential officials.

Justice

Two distinct tasks have fallen to the Minister of Justice in 'Iraq: the organization and the administrative supervision of the courts and the drafting and codifying of legislation not only for the assurance of public justice but also for the regulation and development of other administrative services.

692 In the period 1925 to 1932, the number of Civil Courts was extended until they were in operation in varying degrees at forty-eight centres. Criminal Justice continued to be administered by the Civil Judges of these courts and also, in certain cases, by Administrative Inspectors and other senior officials. *Shara'* or Muslim Religious Law Courts continued to be established, not only in all centres where Civil Courts were provided but also in other places. Spiritual Courts to enable the Jewish and Christian communities to deal with their own religious law were set up in 1931,[3] in accordance with Articles 78-80 and 112 of the Constitution.

In the creation and administration of the *Shara'* Courts, including those established for the Shī'a sect, a tendency has been noticed to assimilate them with the Civil Courts in order

[1] An outstanding instance has been the passage of legislation, remitting revenue on lands irrigated by pumps, by a Minister of Finance, who, as one of the largest owners of such lands, saved himself £3000 in taxes annually.

[2] *Audit Report of the Comptroller and Auditor General on Accounts of the Government of 'Iraq*: 1922 . . . (Baghdad, 1924 . . .).

[3] *Compilation*, 1931, Armenian Orthodox Community Law, No. 70 of 1931: Jewish Community Law, No. 77 of 1931.

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that eventually all cases involving Religious Law will be heard in the Civil Courts, along the lines of the Judicial system in force in present-day Turkey. Steps towards that end have been the appointment wherever possible of Civil Judges to act also as *Qādhīs* of the *Shara'* Courts,[1] and the passing of a law legalizing the transfer of law cases from *Shara'* Courts to Civil Courts. These steps have been facilitated both by the ability of the 'Iraqī Civil Judges to administer the *Shara'* Law and by the evident approval of a substantial portion of the public who have found in Turkey, both past and present, the model for 'Iraqī statecraft.

In the administration of justice in tribal areas, the application of the Tribal Criminal and Civil Disputes Regulations[2] has continued but with much controversy. On the one hand, it has been held that the tribes represent a class unfamiliar with the laws and conventions applicable in a more highly civilized society, but possessing a code which, although harsh and even repellent, is definite and is recognized among themselves. The code, according to this view, should be applied to the tribes through the Tribal Disputes Regulations until such time as the normal system of justice can be brought into force among them. This has been the viewpoint of the Ministry of Interior charged with administering the Regulations. On the other hand, it is contended that two systems of justice should not exist side by side in 'Iraq; that much evasion of justice has already occurred through non-tribesmen claiming the right to be tried under the Regulations; and that tribesmen must be assimilated by the body politic. This opinion, although it may not be put forward officially by the Ministry of Justice, has nevertheless influenced the policy of responsible 'Iraqī officials in the Ministry. It has also been repeatedly presented in the Chamber, principally by urban deputies who in their speeches have voiced the prejudices of the greater part of the townsmen of 'Iraq.'

[1] In 1931, Civil Court Judges were also *Shara' Qādhīs* in 24 places.
[2] As amended, December 28th, 1924. See *Compilation*, 1924, p. 63.

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discrimination in accordance with capacity. Finally, Article 37 states that the method of election to the Chamber of Deputies shall take into account the necessity for the representation of non-Islamic minorities.

Some of these guarantees have been reinforced by particular laws. Thus the Electoral Law of 1924 allotted four deputies to the Christians and four to the Jews; it is a matter for dispute whether the law permits individual Christians and Jews to be elected as representatives of the ordinary constituencies. Similarly the non-Moslem communities were given representation in local and municipal councils by special laws.

As for the linguistic minorities, the Local Languages Law of 1931 provided that the official language should be Kurdish or Turkish in a number of districts, and in addition that in all elementary and primary schools in those districts the language of instruction should be the mother-tongue of the majority of the pupils.

Personal Status and Communal Organization

The grant to religious minorities of jurisdiction in personal and other matters has not met with the same difficulties as those which have occurred in Syria. Articles 75 and 78 of the Constitution provided for the establishment of Christian and Jewish Spiritual Councils, with powers of jurisdiction to be conferred upon them by special laws. Their functions were defined in Article 79 as including matters relating to marriage, dowry, divorce, separation, alimony, attestation of wills and any other matters relating to personal status if the parties concerned consented. Every religious community was also, according to Article 112, to have the right to establish bodies competent to administer Waqf property.

In application of these provisions, several laws have been issued for particular communities, defining the method of appointment of the spiritual heads of the communities and of their councils, both spiritual and lay, and their functions in regard not only to personal status but also the decision of religious questions, the training of ecclesiastics, the administration of Waqf property, and the administration of schools and charitable institutions. For those communities for which special laws have not yet been issued, the old Turkish law on the subject remains valid.

57: Davis S-4 (no date)1953 Ml Middle East
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dence for a period not exceeding eight days. The Chamber shall not be dissolved during that period.

Art. 67. A Minister shall despatch all business relating to his Ministry and departments attached thereto in manner prescribed by law.

PART V

THE JUDICATURE

Art. 68. Judges shall be appointed by Royal Irada and may only be removed in the circumstances mentioned in the special law dealing with the conditions governing their qualifications, appointment, grades and method of dismissal.

Art. 69. The Courts shall be divided into three classes:

1. Civil Courts.
2. Religious Courts.
3. Special Courts.

Art. 70. The manner of instituting the Courts, the places where they are to be established, the grades, divisions, jurisdiction and supervision thereof, and the execution of judgments, shall be determined by special laws, subject to the provisions of this law.

Art. 71. The Courts shall be free from all interference in the conduct of their affairs.

Art. 72. All sittings of the Courts shall be open to the public, unless some legal justification exists for holding sittings *in camera*. Judgments of the Courts, as well as the proceedings thereof, may be published, except those relating to sittings held *in camera*. All judgments shall issue in the name of the King.

Art. 73. The Civil Courts shall have jurisdiction over all persons in Iraq, in all actions and civil and criminal matters, and those brought by or against the Iraq Government, with the exception of actions and matters coming within the jurisdiction of the religious or special Courts, as stated hereinafter in this law, or in any other law in force.

Art. 74. The jurisdiction of the Civil Courts includes civil, commercial and criminal matters, in accordance with the laws in force, provided that, in matters relating to the personal status of foreigners and in other civil and commercial matters in which by international custom the terms of the law of a foreign country are to be applied,

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642 such law shall be applied in manner to be prescribed by special law.
692 Art. 75. The religious Courts shall be divided into:

1. Shara' Courts.
2. The Spiritual Councils of the Communities.

Art. 76. The Shara' Courts alone shall be competent to deal with actions relating to the personal status of Muslims and actions relating to the administration of Waqf foundations.

Art. 77. Justice shall be administered in the Shara' Courts in accordance with the terms of the Shara' doctrine peculiar to each of the Islamic sects, in conformity with the terms of a special law. The Qadhi shall be a member of the sect to which the majority of the inhabitants of the place to which he is appointed belong, maintaining the appointment of both *Sunni* and *Ja'feri* Qadhis in the cities of Baghdad and Basra.

Art. 78. The Spiritual Councils of the Communities include the Jewish Spiritual Councils and the Christian Spiritual Councils. Such Councils shall be established, and powers of jurisdiction conferred upon them, by a special law.

Art. 79. The Spiritual Councils shall be competent to deal with the following matters:

1. Matters relating to marriage, dowry, divorce, separation, alimony, attestations of wills other than those attested by a notary public (with the exception of those matters coming within the jurisdiction of the Civil Courts relating to members of the community), but excluding foreigners who are members of such community.
2. Any other matter of personal status relating to members of the communities, if the parties so agree.

Art. 80. The procedure to be followed and the fees to be levied in the Spiritual Councils of the Communities shall be prescribed by special law. Succession, freedom of testamentary disposition and similar matters relating to personal status not coming within the jurisdiction of the Spiritual Councils of the Communities shall be regulated by law.

Art. 81 *(as amended October 27, 1943)*. The High Court will assemble to try Ministers and members of Parliament for political offences or offences connected with their public duties, and to try judges of the Court of Cassation for offences arising out of their

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duties, and to decide matters connected with the interpretation of this law and the conformity of other laws to this law. 642 692

Art. 82 *(as amended October 27, 1943).*

1) If it be necessary to hold a trial before the High Court the case shall be submitted to the Court by a resolution of accusation, passed by the Chamber of Deputies, separately in each case, by a majority composed of two thirds of the members present.

2) Other matters shall be submitted to the High Court by decision of the Council of Ministers or of one of the Assemblies of Parliament.

3) The High Court shall be constituted of eight members, beside the President, to be chosen by the Senate, four of them being senators and four of them being judges of the Court of Cassation or other senior judges. The Court will sit under the presidency of the President of the Senate or, if he cannot be present, his deputy.

Art. 83 *(as amended October 27, 1943).* If it is required to decide a matter connected with the interpretation of the provisions of this law, or to decide whether a law in force contravenes the provisions of this law, the High Court will assemble by virtue of a Royal Irada, to be issued with the consent of the Council of Ministers, after the Court has been constituted as prescribed by paragraph 3 of the preceding article. If Parliament is not in session the members shall be appointed by decision of the Council of Ministers and Royal Irada.

Art. 84 *(as amended October 27, 1943).* If it is necessary to interpret laws or regulations in circumstances other than those described in the preceding article, or if it is necessary to decide whether a regulation contravenes the law on which it is based, a Diwan Khas shall, at the request of the Minister concerned, be constituted under the presidency of the President of the Civil Court of Cassation or, if he is unable to attend, the Vice-President. The members shall be chosen as prescribed by a special law, three of them from the judges of the Court of Cassation and three from the senior military officers if the law in question concerns the armed forces, or three from the senior administrative officials if the law concerns administrative matters.

Art. 85 *(as amended October 27, 1943).* Cases tried by the High Court shall be decided according to law. An accused person shall not be declared guilty except by a majority of two thirds of the Court.

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642 692 The decisions of the Court are final. Persons who are accused by the Chamber of Deputies shall forthwith relinquish their duties. Resignation shall not be a bar to prosecution.

Art. 86 *(as amended October 27, 1943).*

1) Every decision of the High Court declaring that a law or any provision of a law contravenes the provisions of this law shall issue by majority of two thirds of the Court. If a decision of this nature is issued, then the law, or the offending portion thereof, will stand repealed from the date on which the decision was issued, provided that the Government shall introduce legislation providing for compensation for damage which may have been caused by the application of the repealed provisions.

2) Every decision issuing from the Diwan Khas, declaring that a regulation, or some provision thereof, contravenes the law on which it is based, shall be by a majority of two thirds of the Diwan. If a decision of this kind is issued, then the regulation, or the offending part thereof, shall stand repealed from the date of the issue of the decision.

Art. 87. Decisions taken by the High Court regarding matters referred to in Article 83 (with the exception of those matters referred to in Article 86) and taken by the Diwan Khas regarding matters referred to in Article 84 shall be taken by a majority of the Court of Diwan Khas. Such decisions shall apply to all Courts and Government Departments.

Art. 88. Special Courts or Committees shall be set up when necessary for dealing with the following matters:

1) For the trial of members of the Iraq Military Forces for offences mentioned in the Military Penal Code.

2) For settling criminal and civil cases relating to the tribes in accordance with tribal custom as provided for by special law.

3 For the settlement of disputes arising between the Government and Government servants concerning their duties.

4) For investigating disputes relating to the possession or boundaries of lands.

5) *(as added October 27, 1943).* Courts-martial and Special Courts set up in the circumstances described in Article 120 of this law.

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Art. 89 *(as amended October 27, 1943)*. The procedure in the Special Courts and the fees to be collected therein and the manner of appeal against, or revision of, the judgments thereof, shall be prescribed by law.

PART VI

FINANCIAL MATTERS

Art. 90. All taxes and excise dues shall remain unaltered as from the coming into force of this law, until changed by law.

Art. 91 *(as amended October 27, 1943)*. Taxes and dues shall not be imposed except by law, provided that this shall not apply to charges collected by Government Departments in return for public services rendered by them or in return for the enjoyment of State property. Taxes and duties may not be imposed by ordinance.

Art. 92 *(as amended October 27, 1943)*. Taxes and dues must be collected from the tax payers without distinction and none of them shall be exempted therefrom except by law.

Art. 93. No property of the State may be sold, granted, leased or otherwise disposed of except in accordance with law.

Art. 94. No monopoly or concession shall be granted for dealing with or using any of the natural resources of the land, or for any public service, nor shall the State revenues be farmed out, except in accordance with law, provided that, where the period relating to them exceeds three years, they must in each case be the subject of a special law.

Art. 95. The Government may not contract any loan, nor undertake anything involving payment out of public monies, except in accordance with a special law, unless the Budget Law makes provision therefor.

Art. 96. All monies received by Government officials must be paid into the State Treasury and accounted for in accordance with such procedure as is prescribed by law.

Art. 97. No salary may be allotted, nor remuneration paid, nor any monies belonging to the State Treasury expended for any reason whatsoever, except in accordance with law. No item in the budget estimates shall be expended except in such manner as is prescribed by law.

Art. 98. The budget estimates shall be sanctioned by an annual

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probably at the instigation of the Agha, because he was held to have corrupted the morals of the youth. 609

Health services need not concern us. In the area studied there is no resident doctor outside the city of Erbil. 758

The Government have made various experiments in agricultural reform chiefly with a view to improving the breed of livestock and the quality of valuable crops such as tobacco. The Government's interest in the improvement of the tobacco crop is especially relevant to the area here described. Details will be discussed later but it may be pointed out that Government assistance of this kind is not a philanthropic enterprise. The heavy excise duty levied on all saleable tobacco much more than repays any expenses incurred. Iraq 635 K 249

The independent judiciary functions through its court in Erbil. In practice however it is in the nature of appeal court, since in the first instance cases come before the Mudir (sub-district magistrate) and then before the Qa'im Maqam (district magistrate) before being referred to the court. I am not clear as to the rules governing "appeal" of this sort, nor as to the limits of sentence that can be imposed by the magistrates' courts. So far as I know, only serious cases such as homicide automatically go before the court at Erbil. Iraq 635 692

During time of peace the military are stationed only at Erbil and Rowandus. There appears to be a general attitude of suspicion and conflict as between the civil and the military authorities. In this area the civil service is staffed mainly by Kurds and Turks and is thus in general inclination Kurdo-phil. The army on the other hand is staffed mainly by Iraqi-Arabs whose hatred and fear of the "barbarous Kurd" can be taken for granted. 635 701 K 578

The liwa is divided into several districts (khasa) each presided over by a district magistrate (Qa'im Maqam). Area A, Map 1 with which this account is mainly concerned lies wholly within the khasa of Rowandus. The Qa'im Maqam is responsible for his district in much the same way as the Mutasarrif is responsible for his liwa. Iraq 635

The khasa in turn is subdivided into several sub-districts (nahiya) over which presides a Mudir. The Balik tribe all reside within the nahiya Balik - the administrative district in this case coinciding with the tribal one. Dergala on the other hand is administered from Rowandus.

The Mudir has in his direct control a number of policemen who provide the direct liaison between the external authority and the tribe. It is the venality of these junior officials which is the worst feature of the system, and which is the real source of Iraq 635 625